

APPENDIX A

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| PILAR LOWENTHAL, | * | IN THE |
| | | |
| Plaintiff | * | COURT OF |
| | * | |
| | | APPEALS |
| | | |
| v. | * | OF |
| | | |
| MORTON E. ROME, | * | MARYLAND |
| Surviving Pers. Rep. of the | | |
| Estate of Jean Arthur | * | NO. 174 |
| Lowenthal, et al | | |
| | * | |
| Defendant | | |
| * * * * * | | |

COUCH, JUDGE

We are here called upon to determine whether the Orphans' Court of Baltimore City erred in ordering a renunciation¹, filed by Mrs. Pilar Lowenthal in the estate of Mr. Jean Arthur Lowenthal, to be of no force and effect.

The underlying facts are, in pertinent part, uncontradicted and may be capsulized as follows. In 1959, Pilar, the appellant, and Jean, the appellee's decedent,

¹Md. Code (1974, 1981 Cum. Supp.), Estate & Trusts Article, Sec. 3-203, gives the surviving spouse the right to take one-half of the decedent's estate if there is no surviving issue, or one-third if there is surviving issue, instead of the property left to him by will.

journeyed from their home in Malaga, Spain, to Gibraltar, where they were married by a British Magistrate. Pilar, a Spanish citizen, was of the Roman Catholic faith and Jean, an American citizen domiciled in Maryland, was a non-Catholic. At that time in Spain, Pilar, as a Catholic, could only marry another Catholic in a religious ceremony and could marry a non-Catholic in a civil ceremony only if she renounced her faith and Jean did not wish to convert to Catholicism, they married in Gibraltar under English law. After their marriage, the parties returned to Spain and their Malaga home in which they had previously resided together for a number of years. In 1961, the parties separated and the appellant left the household with the parties' two children who had been born in 1956 and 1959, prior to their Gibraltar marriage. That same year, one Anna Larseon Bernadotte and her son moved into Mr. Lowenthal's home.

In 1962, Mr. Lowenthal successfully sought in the Spanish courts an annulment of

his marriage to the appellant, which was ultimately affirmed by Spain's highest court, the Supreme Court. In 1966, Mr. Lowenthal married Ms. Bernadotte. Mr. Lowenthal died testate in 1977. Ms. Bernadotte had predeceased him in 1975. Mr. Lowenthal left an estate in Maryland which was being administered by the Orphans' Court of Baltimore City. Having been ignored in the appellee's will, the appellant filed in the Orphans' Court a renunciation of al provisions thereof and elected to take the intestate share of his estate pursuant to Maryland Code (1974, 1981 Cum. Supp.), Estates and Trusts Article, Sec. 3-203. After certain procedural sparring, not pertinent here, the Orphans' Court held a hearing and concluded that it would recognize the Spanish decree of annulment, thereby rendering appellant's renunciation of no force and effect. This appeal ensued and we granted certiorari before consideration by the Court of Special Appeals to address an issue of public importance.

Section 3-203 of the Estates and Trusts Article provides that a surviving spouse may elect to take the share which he might take in intestacy instead of the property left to him by will. Section 1-202 of the Article spells out who may not be considered a surviving spouse; it reads as follows:

"(a) Valid divorce. - No person who is validly divorced a vinculo matrimonii from the decedent or whose marriage to the decedent has been annulled is a surviving spouse.

(b) Divorce. - No person who has in a proceeding in which an a vinculo matrimonii divorce between the decedent and the survivor, or an annulment of their marriage was obtained, even though not recognized as valid in this state, is a surviving spouse. This subsection does not apply if the parties to the divorce or annulment subsequently remarry each other.

(c) Marriage to a third party.

No person who participates in a marriage ceremony with a third person, after a decree or judgment of divorce or annulment obtained by the decedent, is a surviving spouse.

(d) Conviction of bigamy. - No person who has been married to the decedent is a surviving spouse."

The appellant argues that she was validly married to Mr. Lowenthal and that the Orphans' should not have recognized the Spanish annulment decree because it was obtained on a ground not recognizable in Maryland and against the strong public policy of this State. On the other hand, the appellee contends that Mrs. Lowenthal is not a surviving spouse because, under section 1-202(a), the Spanish decree was valid in Spain and should be recognized in Maryland and because, under section 1-202(b), of her voluntary appearance in the Spanish

proceeding. The Orphans' Court, in agreeing in part with appellee's position, stated:

"We are inclined to agree her appearance was not 'voluntary' in the sense that she was not the original moving party. However, she was faced with an alternative, and to the extent she exercised her options, her appearance was voluntary. We recognize that the eventual definition of 'voluntary' as used in Section 102(b) of the Estates and Trusts Article must come from a higher court."

Thereafter, that court stated that it would not rest its decision on section 1-202(b) but on section 1-202(a). In doing so, it stated:

"It may be observed here that, although Maryland prohibits common law marriages within our state, the public policy of Maryland has long recognized a foreign common law marriage, provided, of course, it is valid where consummated."

Penultimately, the court stated:

"While Section 1-202(a) of the Estates and Trust Article does not use the same language regarding 'validity' as does Section 1-202(b), we are bound to our statute as it is written. Since Section 1-202(a) simply uses the word 'valid', it must be tested by

the standards of the jurisdiction where the decree of annulment was granted, the Republic of Spain."

Without further elucidation, the court then held that the appellant's renunciation was of no force and effect because the marriage of the parties had been dissolved by the Supreme Court of Spain in 1965. We shall affirm the order of the Orphans' Court, not, however, for the reason utilized by that court, about which we express no opinion.

In our view, section 1-202(b), set out above, governs the fact situation presented in this appeal. By section 1-202, the legislature has provided who may not be a surviving spouse. Sub-section (b) makes clear that neither party who voluntarily appears in a proceeding where, in pertinent part, an annulment of their marriage is obtained, even though not recognized as valid in this state, may be deemed a surviving spouse upon the death of the other spouse. The critical question, then, is what did the legislature mean by

"voluntarily appear" within the context of this sub-section.

Judge Cole, speaking for the Court in State v. Berry, 287 Md. 491, 495-496, 413 A.2d 557, 560 (1980), stated:

"As we have stated many times, the cardinal rule of statutory construction is to ascertain of the legislature. Board v. Stephens, 286 Md. 384, 408 A.2d 1017 (1979); Harbor Island Marina v. Calvert Co., 286 Md. 303, 407 A.2d 738 (1979); S.A.S. Personnel Consult v. Pat-Pan, 286 Md. 335, 407 A.2d 1139 (1979); Unnamed Physician v. Comm'n, 284 (285) Md. 1,400 A.2d 396 (1979). The statutory language itself provides the clearest indication of the legislative intent and is thus the primary source for all statutory construction. Board v. Stephens, supra; Harbor Island Marina v. Calvert Co., supra. We also adhere to the principle that the court should confine itself to construing the statute according to the ordinary and natural signification of the words used without resorting to subtle or forced interpretations designed to limit or extend the operation of the statute. Harbor Island Marina v. Calvert Co., supra; Mauzy v. Hornbeck, 285 Md. 84, 400 A.2d 1091 (1979); Massage Parlors, Inc. v. City of Balto., 284 Md. 409, 398 A.2d 52 (1979). When the words used convey a

clear and plain meaning, there is no need to look beyond the statute to ascertain the legislative intent. Collier v. Connolley, 285 Md. 123, 400 A.2d 1107 (1979); Mauzy v. Hornbeck, supra, 285 Md. at 93 (400 A.2d 1091); Massage Parlors, Inc. v. City of Balto., supra, 284 Md. 494- 95 (398 A.2d 52)."

(1) It is clear from the language of sub-section (b) that the legislature intended to disqualify as a surviving spouse any person who voluntarily appeared in a proceeding where the marriage was annulled or a divorce obtained even though not recognized as valid in Maryland. Patently, this translates into a legislative intent to bar one from being a surviving spouse even though the divorce or annulment may have been obtained for reasons which would not be recognized in Maryland.

"Voluntary" has been variously defined as "acting or done of one's own free will without valuable consideration," "acting or done without any present legal obligation...", "not accidental: intentional." Webster's Third New International Dictionary

2564 (1976). Black's Law Dictionary 1413 (5th ed. 1979), defines "voluntary", in part, as "Done by design or intention. Proceeding from the free and unrestrained will of the person. Produced in or by an act of choice." In State v. Comes, 237 Md. 271, 277, 206 A.2d 124, (1965), the Court stated:

"The Oxford English Dictionary, Vol. 12, describes 'voluntarily' as being 'of one's own free will and accord; without compulsion, constraint or under influence by others; freely, willingly.'"

(2-4) In the instant case, we are advised that the Spanish proceeding began when Mr. Lowenthal filed an action for "declaratory judgment"² seeking to have his marriage to the appellant declared a nullity. It would appear from the record that Mrs. Lowenthal was served with some kind of process, and answered by attacking the court's jurisdiction over the subject matter and, separately, by a plea to

²This "declaratory judgment" is not to be confused with a proceeding under Code (1974, 1980 Repl. Vol.), Cts. & Jud. Proc., Art., Sec. 3-401 et seq.

the merits. We find nothing in the record to suggest that her appearance was compelled under any kind of penalty such as exposure to being held in contempt of court and subject to incarceration. We also observe that it was appellant's burden to prove that the Spanish law in this respect was, as it would appear Pilar such law would not be subject to judicial notice under Code (1974, 1980 Repl. Vol.), Courts & Judicial Proceedings Article, Sec. 10-501, absent a showing that Spain had a system of law based on the common law of England.³ Such proof being absent, we are not at liberty to assume that the appellant was compelled to appear in the proceedings brought by the appellee's decedent. It, therefore, appears that the appellant had a choice whether or not to appear. She chose to appear and, in doing so, she exercised her free will without compulsion. It seems to us that by so doing the appellant, within the context of subsection

³Section 10-501. Judicial Notice.

(b) of section 1-202, voluntarily appeared and, thus, cannot be a surviving spouse.

Accordingly, we hold, on this record, that the appellant falls within the terms of sub-section (b) of section 1-202 and, therefore, cannot be deemed a surviving spouse. We shall affirm the order of Orphans' Court.

ORDER AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

APPENDIX B

MANDATE

COURT OF APPEALS OF MARYLAND

No. 174, September Term, 1981

PILAR LOWENTHAL

v.

MORTON E. ROME, Surviving
Personal Representative of
the Estate of Jean Arthur
Lowenthal et al.

* Appeal from the
* Orphans' Court
* of Baltimore
* City pursuant
* to certiorari
* to the Court of
* Special
* Appeals.
* Filed:
* February 22,
* 1982.
* September 3,
* 1982: Order
* affirmed.
* Costs to be
* paid by
* appellant.
* Op. by Couch
* J.
* October 4,
* 1982: Motion
* for reconsid-
* eration and
* request for
* stay of man-
* date filed by
* appellant.
* October 4,
* 1982: Above
* motion denied.

* * * * *

STATEMENT OF COSTS:

In Circuit Court:

Record -
Stenographer's Costs -

In Court of Appeals:

| | |
|------------------------------|---------------|
| Petition Filing Fee | \$20.00 |
| Printing Brief for Appellant | Not supplied. |
| Portion of Record Extract | |
| - Appellant | - |
| Reply Brief | - |
| Appearance Fee - Appellant | |
| | 10.00 |
| Filing Fee on Appeal (Court | |
| of Special Appeals) | 30.00 |
| Motion for Reconsideration | 10.00 |
| Printing Brief for Appellee | \$154.00 |
| Portion of Record Extract | |
| - Appellee | - |
| Appearance Fee - Appellee | 10.00 |

STATE OF MARYLAND, ss:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals this fifth day of October, 1982.

Clerk of the Court of Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

APPENDIX C

| | | |
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| IN THE MATTER OF | * | IN THE |
| THE ESTATE OF | * | ORPHANS'S |
| JEAN ARTHUR LOWENTHAL | * | COURT |
| Deceased | * | OF |
| | * | BALTIMORE |
| | * | CITY |

* * * * *

MEMORANDUM

This matter came before the Court on a Petition for a Hearing on Renunciation in the Estate of Jean Arthur Lowenthal. The Petitioner, Maria de Pilar San Jose de los Heros, being the alleged surviving widow of the decedent, Jean Arthur Lowenthal.

The Court has considered the pleadings; the extensive testimony, the exhibits, the scholarly memoranda and arguments of counsel.

The central issue to be resolved by the Court is the marital status of the Petitioner as of the date of the death of the decedent, June 20, 1977.

The evidence is abundantly clear that the Supreme Court of Spain, the highest court in Spain, annulled the marriage between the parties in 1965. It is also abundantly clear that Petitioner participated in the annulment litigation at each and every stage of the three court hearings and was represented by counsel at each of the hearings. The litigation was commenced in what may be said to be the court of original jurisdiction by the decedent; appealed to an intermediate court of appeals, and finally, to the Supreme Court of Spain.

These facts bring into play the provisions of our Code, Estates and Trust Article, Section 1-202(b) which requires us to give effect to foreign annulments whether or not such annulments would be valid in Maryland if the party claiming the right had "voluntarily" appeared. We are inclined to agree that her appearance was not "voluntary" in the sense that she was not the original moving party. However, she was faced with an

alternative, and to the extent she exercised her options, her appearance was voluntary. We recognize that the eventual definition of "voluntary" as used in Section 102(b) of the Estates and Trusts Article must come from a higher court.

In light of what we have just stated, we are unable to rest our decision upon Section 1-202(b) and we consider this case under the provisions of Section 1-202(a) of the Estates and Trust Article. That statute reads thusly:

"No person who is validly divorced a vinculo matrimonii from the decedent or whose marriage to the decedent has been validly annulled is a surviving spouse".

That the annulment of the marriage was valid in Spain is beyond question. The three courts through which the controversy travelled had full and complete jurisdiction of the persons involved and the subject matter, annulment. As mentioned above, the highest court of Spain, the Supreme Court, made the final ruling.

Counsel for Petitioner urges that the annulment, although valid in Spain, should not be recognized by this Court because religious grounds was the basis for the decision of the Supreme Court of Spain. Counsel points out that in Maryland, our statutes do not recognize religious grounds as a basis for the annulment of a marriage. Therefore, counsel argues that for us to recognize the decree of annulment granted by Spain's highest court, would be contrary to the "public policy" of the State of Maryland. The undisputed evidence adduced before us proved that the civil courts of Spain follow the canonical law of the Roman Catholic Church when determining the matter of an annulment. It may be observed here that, although Maryland prohibits common law marriages within our state, the public policy of Maryland has long recognized a foreign common law marriage, provided, of course, it is valid where consummated.

While Section 1-202(a) of the Estates and Trust Article does not use the same

language regarding "validity" as does Section 1-202(b), we are bound to give effect to our statute as it is written. Since Section 1-202(a) simply uses the word "valid", it must be tested by the standards of the jurisdiction where the decree of annulment was granted, the Republic of Spain.

The Court finds and it so holds that the renunciation filed in the estate of Jean Arthur Lowenthal, by the Petitioner, is of no force and effect as the marriage between the parties had been dissolved by the Supreme Court of Spain in the year 1965.

Counsel for the Personal Representative will prepare an Order effectuating the decision of the Court with costs of Petitioner.

JUDGES

Dated: _____

APPENDIX D

| | | |
|-----------------------|---|-----------|
| IN THE MATTER OF | * | IN THE |
| THE ESTATE OF | * | ORPHANS' |
| JEAN ARTHUR LOWENTHAL | * | COURT |
| Deceased | * | OF |
| | * | BALTIMORE |
| | * | CITY |

* * * * *

ORDER

The above entitled cause standing ready for hearing upon Petition for Hearing upon Renunciation and Answer thereto.

The Court having heard extensive testimony, and having previously filed Its Memorandum Opinion in which It found as a fact that Maria de Pilar San Jose de los Heros is not the widow of the deceased.

It is thereupon ORDERED, ADJUDGED, and DECREED this day of August, 1981, by the Orphans' Court of Baltimore City that the renunciation hereinbefore filed be, and the same is of no force and effect.

Costs of these proceedings to be paid by Petitioner.

JUDGES

APPENDIX E

IN THE
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 1981

NO. 174

PILAR LOWENTHAL,

Appellant,

v.

MORTON E. ROME, Surviving Personal
Representative Of The Estate
of Jean Arthur Lowenthal, et al.

Appellees.

MOTION FOR RECONSIDERATION
AND REQUEST FOR STAY OF MANDATE

Pilar Lowenthal, Appellant, by ALLEN,
THIEBLOT & ALEXANDER, JOHN D. ALEXANDER, JR.
and WILLIAM T. KERR, her attorneys, moves,

pursuant to Maryland Rule 850, that this Honorable Court reconsider its September 3, 1982 Opinion and Order and reverse the judgment of the Orphan's Court of Baltimore City.

The Opinion misconstrues the statutory definition of "surviving spouse", as used in Estates and Trusts §1-202 and relies on an erroneous interpretation of the word "voluntary" in §1-202(b), thereby depriving appellant, and others similarly situated, of property without due process of law.

The Court's interpretation of the word "voluntary" is totally at odds with the intent of Maryland Marriage, Divorce and Testamentary laws. The interpretation jeopardizes the marital and property rights of any person whose spouse seeks to divorce them. It effectively prevents them from promptly contesting a foreign divorce for fear their "voluntary" appearance will subsequently bar

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them from taking as a "surviving spouse" under Maryland testamentary law. The interpretation forces them to give up the right to protest the unlawful dissolution of their marriage in order to retain the right to participate in testamentary distribution, a clear denial of due process of law.

Additionally, reconsideration is urged because the Court recognizes a Spanish annulment, granted on religious grounds no longer even cognizable in Spain, where such recognition violates the First Amendment of the Constitution of the United States, the Maryland Constitution, Declaration of Rights, Articles 36 and 37, and the strong public policy of this State.

Lastly, by failing to decide these issues, this Court itself has denied Appellant due process of law.

Appellant is considering filing a Petition for Writ of Certiorari to the United States Supreme Court. Accordingly, Appellant requests a stay of the Mandate of this Court until this Motion for Reconsideration has been decided.

ALLEN, THIEBLOT & ALEXANDER

By:

JOHN D. ALEXANDER

WILLIAM T. KERR

4th Floor

The World Trade Center

Baltimore, Maryland 21202

(301) 837-1140

Attorneys for Pilar Lowenthal

I HEREBY CERTIFY that on this 1st

day of October, 1982, a copy of the foregoing Motion for Reconsideration and Request for Stay of Mandate and attached Order was mailed to Stephen C. Winter, Esquire, White, Mindel,

Clarke & Hill, 305 West Chesapeake Avenue,
Towson, Maryland 21204, Attorney for Morton E.
Rome, Surviving Personal Representative, and
Ronald A. Silkworth, Esquire, 425 St. Paul
Place, Baltimore, Maryland 21202, Attorney for
Rolf Lindner.

Of Counsel for Pilar Lowenthal